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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:
USA COMMERCIAL MORTGAGE COMPANY,

Debtor.

In re:
USA CAPITAL REALTY ADVISORS, LLC,

Debtor.

In re:
USA CAPITAL DIVERSIFIED TRUST DEED FUND,
LLC,

Debtor.

In re:
USA CAPITAL FIRST TRUST DEED FUND, LLC,

Debtor.

In re:
USA SECURITIES, LLC,

Debtor.

Affects:
☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

USACM LIQUIDATING TRUST

Plaintiff,

v.

HOMES FOR AMERICA HOLDINGS, INC.; HFA
CLEAR LAKE, LLC; ONE POINT STREET, INC.; and
MEDITERRANEE HFA, LLC F/K/A HFAH-MONACO,
LLC

Defendants.

Case Nos.:
BK-S-06-10725-LBR
BK-S-06-10726-LBR
BK-S-06-10727-LBR
BK-S-06-10728-LBR
BK-S-06-10729-LBR

JOINTLY ADMINISTERED
Chapter 11 Cases

Judge Linda B. Riegler

Adversary No. 08-___

**USACM LIQUIDATING
TRUST'S ORIGINAL
COMPLAINT**

Hearing Date: n/a
Hearing Time: n/a

1 Plaintiff USACM Liquidating Trust (the “Trust”), as successor to USA Commercial
2 Mortgage Company, hereby complains as follows:

3
4 **I. NATURE OF THIS ACTION**

5 1. In April 2006, USA Commercial Mortgage Company (“USACM”), USA Capital
6 Diversified Trust Deed Fund, LLC (“DTDF”), and certain related entities were forced to file for
7 bankruptcy protection as a result of the gross misconduct by certain insiders, namely Thomas A.
8 Hantges (“Hantges”) and Joseph D. Milanowski (“Milanowski”) (collectively, the “Culpable
9 Insiders”). Among other wrongful conduct, the Culpable Insiders systematically looted USACM
10 and DTDF to fund USA Investment Partners, LLC (“USAIP”), an entity that functioned as their
11 personal “piggy bank,” as well as other entities in which they stood to reap substantial personal
12 profits.
13

14 2. In the aggregate, the Culpable Insiders misappropriated tens of millions of dollars
15 from USACM and DTDF in order: (a) to fund the negative cash flow operations of USAIP and its
16 vast network of affiliated entities; and (b) to pay USAIP’s obligations to third parties. In this
17 adversary proceeding, the Trust seeks to recover \$2.9 million of funds misappropriated from
18 USACM and fraudulently transferred to Defendants.
19

20
21 **II. JURISDICTION / VENUE**

22 3. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
23 §§ 157 and 1334(b) in that this action arises under, arises in, and/or relates to this bankruptcy case.
24

25 4. This action is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (H), and (O).

26 5. This is an adversary proceeding pursuant to Fed. R. Bankr. P. 7001.

6. All of the Defendants are subject to personal jurisdiction in this Court.

1 and (b) servicing the loans that it originated by collecting principal and interest from borrowers and
2 distributing those payments to the investors. USACM earned revenue by charging various fees for
3 these services, including origination, servicing, and extension fees, although these fees often went
4 uncollected.
5

6 16. A significant portion of the fee revenues that USACM actually received was
7 subsequently misappropriated by the Culpable Insiders. Specifically, the Culpable Insiders
8 misappropriated USACM's money to fund entities in which they held an indirect ownership interest
9 through USA Investment Partners, LLC ("USAIP"), including time-share hotels, real estate
10 development entities, and technology companies. The Culpable Insiders often earmarked USACM
11 funds and used USAIP as a conduit for fraudulently transferring these funds to such entities. In
12 other instances, the Culpable Insiders caused USACM to directly transfer funds to entities in which
13 USAIP and the Culpable Insiders had an interest. In the aggregate, the Culpable Insiders
14 misappropriated tens of millions of dollars from USACM to fund their outside business ventures.
15

16 17. It was completely adverse to USACM's interests for the Culpable Insiders to
17 misappropriate USACM's funds for the benefit of USAIP. USACM owed no obligation, and
18 received no benefit for the money provided to USAIP and/or on its behalf. The Culpable Insiders
19 did not charge and/or collect interest on any of these transfers of USACM's funds, thereby
20 precluding USACM from using this money in legitimate investments. In addition, the Culpable
21 Insiders rarely repaid transfers of USACM's funds for USAIP's benefit. In the aggregate, USACM
22 transferred at least \$58 million to USAIP to fund USAIP's investments and pay its obligations.¹
23
24
25
26

¹ The \$58 million obligation is in part or in whole reflected in the note between USACM and USAIP dated May 15, 2006. The Bankruptcy Court approved the note by order dated July 24, 2006.

1 Prior to the Petition Date, USAIP's obligation to repay USACM was undocumented and appeared
2 only as an enormous intercompany receivable to USACM. In at least some instances, the
3 Bankruptcy Court has already found that USACM did not receive reasonably equivalent value
4 when it transferred funds to USAIP in exchange for incremental increases to this intercompany
5 receivable. USAIP's failure to repay such transfers and its ultimate bankruptcy has prevented any
6 possibility of USACM fully recovering on such obligations.
7

8 18. In addition, the Culpable Insiders caused USACM to make scores of other payments
9 for which it received no benefit and for which it had no underlying obligation. Routinely, the
10 Culpable Insiders commingled USACM's operating funds with funds held in the USACM
11 Collections Trust Account and other funds to make regular interest and principal payments to
12 investors in non-performing loans. These payments were made to conceal delinquent and defaulted
13 loans from other USACM directors, officers, employees, shareholders, as well as the investors and
14 regulatory authorities. In turn, this induced existing investors to maintain or increase their
15 investments with USACM and enticed new investors to entrust their money to USACM, thereby
16 providing the Culpable Insiders with liquidity to fund their scheme, and thus, future sources of funds
17 to loot from USACM.
18

19 19. Ultimately, USACM lost millions of dollars by making principal and interest
20 payments on loan obligations that it did not owe on behalf of defaulting borrowers. USACM did
21 not receive any benefit from making these "pre-payments" of interest and principal. Rather, such
22 payments were expressly forbidden by Nevada law, including NRS 645B.250.
23

24 20. The Culpable Insiders also misappropriated USACM's funds directly for their
25 personal benefit. USACM frequently made unsecured, interest-free "advances" directly to the
26

1 Culpable Insiders. In other instances, the Culpable Insiders misappropriated USACM funds to pay
2 for professional services rendered solely for the benefit of the Culpable Insiders and/or one of their
3 outside business ventures.
4

5 21. Ultimately, USACM lost tens of millions of dollars through the myriad of ways in
6 which the Culpable Insiders' systematically misappropriated USACM funds.² Additionally, the
7 Culpable Insiders also systematically looted DTDF to fund USAIP and its affiliated entities.
8 Approximately \$55 million was taken from DTDF and sent to USAIP and related entities, either
9 directly or indirectly through two sham companies — 10-90, Inc. ("10-90") and Mountain Vista,
10 Inc.
11

12 **B. DEFENDANTS' DEALINGS WITH USACM AND USAIP**

13 22. HFAH is a holding company for dozens of real estate projects, including without
14 limitation, Clear Lake and HFAH Monaco. Generally, HFAH provides a variety of corporate
15 services to the entities under its umbrella, including maintaining records and providing accounting,
16 architectural, legal, and other services.
17

18 23. USACM began originating loans to HFAH and/or affiliated entities in the mid to late
19 1990s. Over time, USACM originated more than a dozen loans totaling nearly \$100 million to
20 HFAH and/or affiliated entities in Texas, Florida, Connecticut, and New York.
21

22 24. In several instances, these loans were not properly documented. For example, no
23 loan documents were executed for the approximately \$5 million loan that USACM originated to
24
25

26 ² A more detailed discussion of the fraudulent scheme leading to USACM's demise and bankruptcy may be found in the USACM Liquidating Trust's Complaint Against Deloitte & Touche, LLP and Victoria Loob. See Docket No. 1 in Cause No. 2:08-cv-00461-PMP-PAL, pending in the United States District Court, District of Nevada, Las Vegas Division.

1 HFAH Asylum, LLC in November 2004. As of the end of 2005, more than \$40 million in
2 undocumented loans and other advances had been made to HFAH and/or its affiliated entities.

3 25. Several million dollars of undocumented loans and/or other advances were made
4 from DTDF to Colt Gateway, LLC, an entity in which HFAH and USAIP each held a substantial
5 membership interest. These transfers violated provisions in DTDF's prospectus that expressly
6 prohibited DTDF from making loans that were not secured by a recorded interest in real property.
7

8 26. In addition to the failure to properly document loans and other "advances," there
9 were many other irregularities in connection with the loans that USACM originated to HFAH
10 and/or its affiliated entities.
11

12 27. First, HFAH and its affiliated entities did not make monthly interest payments on
13 loans originated by USACM. Although some of the loans included "interest reserves" that would
14 defer the need for HFAH to make interest payments until the "interest reserve" was completely
15 depleted, these "interest reserves" were often exhausted prior to the loans being re-paid. Further,
16 HFAH or its affiliates failed to make the requisite interest payments after the interest reserves were
17 exhausted. Despite the lack of an interest payment from the HFAH entity, upon information and
18 belief, USACM caused interest to be "pre-paid" to the investors and where USACM had no legal
19 obligation to do so.
20

21 28. Second, the maturity date for several loans to HFAH affiliated entities reached
22 maturity without a payoff or extension. In many instances matured loans were extended months
23 after their original maturity date. In such situations, the Culpable Insiders caused the applicable loan
24 extension agreements to be backdated to the original maturity date or the maturity dates in any
25 previous loan extension agreements. For example, USACM made one loan to HFAH Monaco with
26

1 an original maturity date of December 19, 2004. A loan extension agreement dated as of December
2 19, 2004 referenced the delinquent interest balance on the loan as of May 31, 2005, indicating that
3 the loan extension agreement had not been executed until at least June 2005.
4

5 29. Third, in at least one instance, USACM originated a new loan for the purpose of
6 paying off a pre-existing loan that USACM had originated to the same real estate project.
7 Specifically, in January 2003, USACM originated a loan to Beau Rivage Homes for America, LLC
8 (“Beau Rivage”) for the purpose of paying off a pre-existing loan that USACM had originated to
9 Amalfi-Homes for America, LLC (“Amalfi”). The Culpable Insiders never disclosed the “re-
10 financing” nature of this transaction to investors. Nor was DTDF, the only investor in the original
11 loan to Amalfi, repaid from the new loan proceeds. Rather, the money funded to Beau Rivage for
12 the purpose of repaying DTDF was sent as a loan funding directly to another entity affiliated with
13 HFAH.
14
15

16 30. Fourth, the loan proceeds of several loans originated by USACM were sent outside
17 of third-party escrow. For example, on January 3, 2003, USACM wired \$3.2 million of the \$8
18 million to be funded on the Beau Rivage loan to the Daniel G. Hayes IOLTA Account, even though
19 Fidelity National Title Company was the third-party escrow used for the remainder of the loan
20 funding. Hayes, as an HFAH officer and director, was not an independent party to the transaction.
21

22 31. Finally, in several instances, USAIP received “equity kickers” in exchange for
23 USACM originating a loan to an entity affiliated with HFAH. For example, USAIP received a 50%
24 membership interest in Beau Rivage, solely because USACM had originated the loan to the project.
25 USAIP did not provide any consideration to USACM, HFAH, and/or to Beau Rivage in exchange
26 for the 50% interest in Beau Rivage and was not entitled to receive such membership interest.

32. Through this course of dealings, the Defendants knew or should have known: (a) of the distinction between USAIP and USACM; (b) that the Culpable Insiders routinely breached fiduciary duties owed to USACM and its creditors; (c) that the Culpable Insiders failed to observe corporate formalities; and (d) that the Culpable Insiders caused USACM to enter into transactions that were not arms-length transactions.

C. THE TRANSFERS FROM USACM TO DEFENDANTS

1. The 2004 Clear Lake Transfer

33. The Culpable Insiders caused USACM to wire transfer \$250,000 from USACM's corporate operating account to the general escrow account of Stewart Title Guaranty Company for the benefit of HFAH and/or HFAH Clear Lake on October 20, 2004; and (b) upon information and belief, Stewart Title Guaranty Company then transferred \$250,000 of USACM's funds: (i) to HFAH for the benefit of HFAH Clear Lake, or (ii) directly to HFAH Clear Lake (collectively the "Clear Lake Transfer"). USACM had no obligation to transfer \$250,000 to HFAH or HFAH Clear Lake, and USACM received no benefit in exchange for making the Clear Lake Transfer.

2. The 2005 Direct Transfer to HFAH

34. On December 22, 2005, the Culpable Insiders caused USACM to wire transfer \$500,000 from USACM's operating account to HFAH (the "2005 Direct Transfer"). USACM had no obligation to transfer \$500,000 to HFAH, and USACM received no benefit in exchange for making the 2005 Direct Transfer.

3. The 2005 Pass-Through Transfer to One Point Street

35. The Culpable Insiders caused: (a) USACM to wire transfer \$950,000 from USACM's operating account to USAIP on September 23, 2005 and an additional \$75,000 from the

1 operating account to USAIP on September 26, 2005; and (b) USAIP to wire transfer \$150,000 of
2 USACM's funds to One Point Street on September 28, 2005 (collectively the "2005 Pass-Through
3 Transfer"). Upon information and belief, the Culpable Insiders earmarked and wired these funds
4 with the purpose of sending \$150,000 directly through USAIP to One Point Street.
5

6 36. USACM had no obligation to transfer \$150,000 to One Point Street, and USACM
7 received no benefit in exchange for making the 2005 Pass-Through Transfer.
8

9 **4. The 2006 Direct Transfers to HFAH**

10 37. In early 2006, the Culpable Insiders caused USACM to wire transfer a total of
11 \$500,000 from USACM's operating account to HFAH in two separate wire transfers (collectively,
12 the "2006 Direct Transfers").
13

14 38. On January 31, 2006, the Culpable Insiders caused USACM to wire transfer
15 \$250,000 from USACM's operating account to HFAH. On February 2, 2006, HFAH transferred
16 \$250,000 to HFAH Monaco.
17

18 39. On February 8, 2006, the Culpable Insiders caused USACM to wire transfer
19 \$250,000 from USACM's operating account to HFAH. On February 13, 2006, HFAH transferred
20 \$250,000 to HFAH Monaco.
21

22 40. USACM had no obligation to make either of the \$250,000 wire transfers to HFAH
23 and USACM received no benefit in exchange for making the 2006 Direct Transfers.
24

25 **5. The 2006 Pass-Through Transfers**

26 41. Virtually on the eve of USACM's bankruptcy filing, the Culpable Insiders directed a
series of wire transfers from USACM's operating account to USAIP to HFAH that totaled \$1.5
million (collectively, the "2006 Pass-Through Transfers").

1 42. Specifically, the Culpable Insiders caused: (a) USACM to wire transfer \$6 million
2 from its operating account to USAIP on March 8, 2006; and (b) USAIP to wire transfer \$500,000 of
3 USACM's funds to HFAH on March 9, 2006 pursuant to Milanowski's specific directions to
4 simultaneously transfer those funds. On the same day, HFAH transferred the \$500,000 to HFAH
5 Monaco. Upon information and belief, the Culpable Insiders earmarked and transferred these funds
6 with the purpose of sending \$500,000 directly from USAIP to HFAH and/or HFAH Monaco.
7

8 43. Once again, the Culpable Insiders caused: (a) USACM to wire transfer \$500,000
9 from its operating account to USAIP on March 17, 2006; and (b) USAIP to wire transfer \$500,000
10 of USACM's funds to HFAH. Upon information and belief, the Culpable Insiders earmarked and
11 transferred these funds with the purpose of sending \$500,000 directly from USAIP to HFAH and/or
12 HFAH Monaco.
13

14 44. The Culpable Insiders caused: (a) USACM to wire transfer an additional \$500,000
15 from its operating account to USAIP on March 27, 2006; and (b) USAIP to wire transfer \$500,000
16 of USACM's funds to HFAH on March 28, 2006. Upon information and belief, the Culpable
17 Insiders earmarked and transferred these funds with the purpose of sending \$500,000 directly from
18 USAIP to HFAH and/or HFAH Monaco.
19

20 45. In turn, on March 30, 2006, HFAH transferred \$1,000,000 to HFAH Monaco.
21

22 46. USACM had no obligation to transfer \$1,500,000 to HFAH and/or HFAH Monaco,
23 and USACM received no benefit in exchange for making the 2006 Pass-Through Transfers.
24
25
26

V. CAUSES OF ACTION

**FIRST CAUSE OF ACTION
(11 U.S.C. § 548(a)(1)(A))**

47. The Trust re-alleges and fully incorporates the allegations pleaded above as if fully set forth herein.

48. The 2005 Direct Transfer, 2005 Pass-Through Transfer, 2006 Direct Transfers, and 2006 Pass-Through Transfers each constituted a transfer of an interest of the Debtor in property.

49. The 2005 Direct Transfer, 2005 Pass-Through Transfer, 2006 Direct Transfers, and 2006 Pass-Through Transfers were made within one year of the Petition Date.

50. The 2005 Direct Transfer, 2005 Pass-Through Transfer, 2006 Direct Transfers, and 2006 Pass-Through Transfers were made with the intent to hinder, delay, or defraud entities to which the Debtor was or became indebted to on or after the date these transfers were made.

51. Pursuant to 11 U.S.C. § 548(a)(1)(A), the Trust asks this Court to avoid the 2005 Direct Transfer, 2005 Pass-Through Transfer, 2006 Direct Transfers, and 2006 Pass-Through Transfers.

**SECOND CAUSE OF ACTION
(11 U.S.C. § 548(a)(1)(B))**

52. The Trust re-alleges and fully incorporates the allegations pleaded above as if fully set forth herein.

53. The 2005 Direct Transfer, 2005 Pass-Through Transfer, 2006 Direct Transfers, and 2006 Pass-Through Transfers each constituted a transfer of an interest of the Debtor in property.

54. The 2005 Direct Transfer, 2005 Pass-Through Transfer, 2006 Direct Transfers, and 2006 Pass-Through Transfers were made within one year of the Petition Date.

1 55. The Debtor received less than a reasonably equivalent value in exchange for the
2 2005 Direct Transfer, 2005 Pass-Through Transfer, 2006 Direct Transfers, and 2006 Pass-Through
3 Transfers.

4
5 56. The Debtor was insolvent on the date the 2005 Direct Transfer, 2005 Pass-Through
6 Transfer, 2006 Direct Transfers, and 2006 Pass-Through Transfers were made or became insolvent
7 as a result of these transfers.

8
9 57. As a result of the 2005 Direct Transfer, 2005 Pass-Through Transfer, 2006 Direct
10 Transfers, and 2006 Pass-Through Transfers, the Debtor was engaged in business or a transaction or
11 was about to engage in business or a transaction for which any property remaining with the Debtor
12 was unreasonably small capital.

13
14 58. As a result of the 2005 Direct Transfer, 2005 Pass-Through Transfer, 2006 Direct
15 Transfers, and 2006 Pass-Through Transfers, the Debtor intended to incur or believed that it would
16 incur debts that would be beyond its ability to pay as such debts matured.

17 59. Pursuant to 11 U.S.C. § 548(a)(1)(B), the Trust asks this Court to avoid the 2005
18 Direct Transfer, 2005 Pass-Through Transfer, 2006 Direct Transfers, and 2006 Pass-Through
19 Transfers.
20

21 **THIRD CAUSE OF ACTION**
22 **(11 U.S.C. § 544 and NRS 112.180(1)(a))**

23 60. The Trust re-alleges and fully incorporates the allegations pleaded above as if fully
24 set forth herein.
25
26

1 61. The Clear Lake Transfer, 2005 Direct Transfer, 2005 Pass-Through Transfer, 2006
2 Direct Transfers, and 2006 Pass-Through Transfers each constituted a transfer of an interest of the
3 Debtor in property.
4

5 62. The Clear Lake Transfer, 2005 Direct Transfer, 2005 Pass-Through Transfer, 2006
6 Direct Transfers, and 2006 Pass-Through Transfers were made within the applicable four-year
7 period under NRS 112.180(1)(a).
8

9 63. On the date of the Clear Lake Transfer, 2005 Direct Transfer, 2005 Pass-Through
10 Transfer, 2006 Direct Transfers, and 2006 Pass-Through Transfers and on the Petition Date, there
11 were creditors with allowable unsecured claims who could have avoided the Clear Lake Transfer,
12 2005 Direct Transfer, 2005 Pass-Through Transfer, 2006 Direct Transfers, and 2006 Pass-Through
13 Transfers pursuant to Nevada state law.
14

15 64. The Culpable Insiders caused the Debtor to make the Clear Lake Transfer, 2005
16 Direct Transfer, 2005 Pass-Through Transfer, 2006 Direct Transfers, and 2006 Pass-Through
17 Transfers with the actual intent to hinder, delay, or defraud creditors of the Debtor.
18

19 65. Accordingly, the Clear Lake Transfer, 2005 Direct Transfer, 2005 Pass-Through
20 Transfer, 2006 Direct Transfers, and 2006 Pass-Through Transfers: (a) are fraudulent transfers
21 under NRS 112.180(1)(a); and (b) may be recovered under NRS 112.220.
22

23 66. Pursuant to 11 U.S.C. § 544(b), the Trust asks the Court to avoid the Clear Lake
24 Transfer, 2005 Direct Transfer, 2005 Pass-Through Transfer, 2006 Direct Transfers, and 2006 Pass-
25 Through Transfers under applicable state law.
26

FOURTH CAUSE OF ACTION
(11 U.S.C. § 544 and NRS 112.180(1)(b))

67. The Trust re-alleges and fully incorporates the allegations pleaded above as if fully set forth herein.

68. The Clear Lake Transfer, 2005 Direct Transfer, 2005 Pass-Through Transfer, 2006 Direct Transfers, and 2006 Pass-Through Transfers each constitute a transfer of an interest of the Debtor in property.

69. The Clear Lake Transfer, 2005 Direct Transfer, 2005 Pass-Through Transfer, 2006 Direct Transfers, and 2006 Pass-Through Transfers were made within the applicable four-year period under NRS 112.180(1)(b).

70. On the date of the Clear Lake Transfer, 2005 Direct Transfer, 2005 Pass-Through Transfer, 2006 Direct Transfers, and 2006 Pass-Through Transfers and the Petition Date, there were creditors with allowable unsecured claims who could have avoided the Clear Lake Transfer, 2005 Direct Transfer, 2005 Pass-Through Transfer, 2006 Direct Transfers, and 2006 Pass-Through Transfers pursuant to Nevada state law.

71. The Debtor received less than a reasonably equivalent value in exchange for the Clear Lake Transfer, 2005 Direct Transfer, 2005 Pass-Through Transfer, 2006 Direct Transfers, and 2006 Pass-Through Transfers.

72. The Debtor was engaged or was about to engage in a business or a transaction for which the remaining assets of the Debtor were unreasonably small in relation to the business or the transaction.

1 73. The Debtor was engaged in business or a transaction or was about to engage in
2 business or a transaction for which any property remaining with the Debtor was unreasonably small
3 capital.
4

5 74. The Debtor intended to incur or believed or reasonably should have believed that it
6 would incur, debts beyond its ability to pay as they became due.

7 75. Accordingly, the Clear Lake Transfer, 2005 Direct Transfer, 2005 Pass-Through
8 Transfer, 2006 Direct Transfers, and 2006 Pass-Through Transfers (a) are fraudulent transfers under
9 NRS 112.180(1)(b); and (b) may be recovered under NRS 112.220.
10

11 76. Pursuant to 11 U.S.C. § 544(b), the Trust asks the Court to avoid the Clear Lake
12 Transfer, 2005 Direct Transfer, 2005 Pass-Through Transfer, 2006 Direct Transfers, and 2006 Pass-
13 Through Transfers under applicable state law.
14

15 **FIFTH CAUSE OF ACTION**
16 **(11 U.S.C. § 550(a) and NRS 112.220)**

17 77. The Trust re-alleges and fully incorporates the allegations pleaded above as if fully
18 set forth herein.

19 78. The Clear Lake Transfer, 2005 Direct Transfer, 2005 Pass-Through Transfer, 2006
20 Direct Transfers, and 2006 Pass-Through Transfers are avoidable under 11 U.S.C. § 544 (through
21 NRS 112.180(1)(a) and (b)) and/or 11 U.S.C. § 548 (a)(1)(A) and (B).
22

23 79. The Trust may recover the value of the 2005 Direct Transfers and 2006 Direct
24 Transfers directly from HFAH as an initial transferee pursuant to 11 U.S.C. § 550(a)(1) and NRS
25 112.220. In the alternative, the Trust may recover the value of the 2005 Direct Transfers and the
26 2006 Direct Transfers from HFAH Monaco as an immediate or mediate transferee of the 2005

1 Direct Transfers and the 2006 Direct Transfers who took without good faith, without giving value,
2 and/or with knowledge of the voidability of the transfers pursuant to 11 U.S.C. § 550(a)(2) and NRS
3 112.220.
4

5 80. The Trust may recover the value of the Clear Lake Transfer directly from HFAH as
6 an initial transferee pursuant to NRS 112.220 and/or 11 U.S.C. § 550(a)(1). In the alternative, the
7 Trust may recover the value of the Clear Lake Transfer from HFAH Clear Lake as an initial
8 transferee pursuant to NRS 112.220 and/or 11 U.S.C. § 550(a)(1) and/or as an immediate or
9 mediate transferee who took without good faith, without giving value, and/or with knowledge of the
10 voidability of the Clear Lake Transfer pursuant to NRS 112.220 and/or 11 U.S.C. § 550(a)(2).
11

12 81. USAIP was merely a conduit through which USACM transferred funds to One
13 Point Street. USAIP had no dominion over such funds. As such, the Trust may recover the value of
14 the 2005 Pass-Through Transfer directly from One Point Street as an initial transferee pursuant to 11
15 U.S.C. § 550(a)(1) and NRS 112.220. In the alternative, the Trust may recover the value of the
16 2005 Pass-Through Transfer from One Point Street pursuant to 11 U.S.C. § 550(a)(2) and NRS
17 112.220 as an immediate or mediate transferee who took without good faith, without giving value,
18 and/or with knowledge of the voidability of the transfers.
19
20

21 82. USAIP was merely a conduit through which USACM transferred funds to HFAH.
22 USAIP had no dominion over such funds. As such, the Trust may recover the value of the 2006
23 Pass-Through Transfers directly from HFAH as an initial transferee pursuant to 11 U.S.C. §
24 550(a)(1) and NRS 112.220. In the alternative, the Trust may recover the value of the 2006 Pass-
25 Through Transfers from HFAH pursuant to 11 U.S.C. § 550(a)(2) and NRS 112.220 as an
26

1 immediate or mediate transferee who took without good faith, without giving value, and/or with
2 knowledge of the voidability of the transfers.

3
4 **SIXTH CAUSE OF ACTION**
5 **(Unjust Enrichment)**

6 83. The Trust re-alleges and fully incorporates the allegations pleaded above as if fully
7 set forth herein.

8 84. By making the Clear Lake Transfer, 2005 Direct Transfer, 2005 Pass-Through
9 Transfer, 2006 Direct Transfers, and 2006 Pass-Through Transfers, USACM conferred a benefit on
10 HFAH Clear Lake, HFAH, One Point Street, and HFAH Monaco.

11 85. HFAH Clear Lake, HFAH, One Point Street, and HFAH Monaco appreciated the
12 benefit in that they: (a) received the Clear Lake Transfer, 2005 Direct Transfer, 2005 Pass-Through
13 Transfer, 2006 Direct Transfers, and 2006 Pass-Through Transfers; and (b) used the proceeds of the
14 transfers as investments in affiliated entities and/or to re-pay their obligations.
15

16 86. HFAH Clear Lake, HFAH, One Point Street, and HFAH Monaco retained the
17 benefits that they received as a result of the Clear Lake Transfer, 2005 Direct Transfer, 2005 Pass-
18 Through Transfer, 2006 Direct Transfers, and 2006 Pass-Through Transfers under circumstances
19 that make retention of these benefits inequitable. Specifically, these transfers resulted from the gross
20 misconduct of the Culpable Insiders in looting USACM for the benefit of themselves and using
21 USACM as their personal "piggy bank." The Defendants knew or should have known of much of
22 the Culpable Insiders' misconduct, including: (a) that the Culpable Insiders routinely breached
23 fiduciary duties owed to USACM and its creditors; (b) that the Culpable Insiders failed to observe
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26

1 corporate formalities; and (c) that the Culpable Insiders caused USACM to enter into transactions
2 that were not arms-length transactions.

3
4 **SEVENTH CAUSE OF ACTION**
5 **(Money Had and Received)**

6 87. The Trust re-alleges and fully incorporates the allegations pleaded above as if fully
7 set forth herein.

8 88. HFAH Clear Lake, HFAH, One Point Street, and HFAH Monaco have received
9 money from the Clear Lake Transfer, 2005 Direct Transfer, 2005 Pass-Through Transfer, 2006
10 Direct Transfers, and 2006 Pass-Through Transfers.

11 89. The Trust is rightfully entitled to the money. The Clear Lake Transfer, 2005 Direct
12 Transfer, 2005 Pass-Through Transfer, 2006 Direct Transfers, and 2006 Pass-Through Transfers
13 were made for USAIP's benefit and were merely part of the Culpable Insiders' systematic abuse of
14 USACM.
15

16 90. In good conscience and equity, HFAH Clear Lake, HFAH, One Point Street, and
17 HFAH Monaco have no right to maintain any money that they received in the Clear Lake Transfer,
18 2005 Direct Transfer, 2005 Pass-Through Transfer, 2006 Direct Transfers, and 2006 Pass-Through
19 Transfers.
20

21
22 **EIGHTH CAUSE OF ACTION**
23 **(NRS 41.580)**

24 91. The Trust re-alleges and fully incorporates the allegations pleaded above as if fully
25 set forth herein.

26 92. In causing the Clear Lake Transfer, 2005 Direct Transfer, 2005 Pass-Through
Transfer, 2006 Direct Transfers, and 2006 Pass-Through Transfers to be made, the Culpable

1 Insiders took \$2.9 million from USACM by theft and/or other offenses constituting a crime against
2 property.

3 93. Defendants received, possessed, and/or withheld all or a portion of the \$2.9 million
4 taken from USACM.
5

6 94. Upon information and belief, Defendants received, possessed, and/or withheld all or
7 a portion of the \$2.9 million taken from USACM: (a) knowing that the Culpable Insiders
8 misappropriated it from USACM by theft and/or other offense(s) that constitute a crime against
9 property; and/or (b) under such circumstances as should have caused a reasonable person to know
10 that the Culpable Insiders misappropriated it from USACM by theft and/or other offenses that
11 constitute a crime against property.
12

13 95. Accordingly, the Trust may recover treble damages from Defendants under NRS
14 41.580.
15

16 **VI. PRAYER FOR RELIEF**

17 WHEREFORE, the Trust respectfully requests that the Court enter judgment as follows:

- 18 (a) Avoiding each of the Clear Lake Transfer, 2005 Direct Transfer, 2005 Pass-Through
19 Transfer, 2006 Direct Transfers, and 2006 Pass-Through Transfers;
20
21 (b) Directing HFAH to pay the value of the Clear Lake Transfer, 2005 Direct Transfer,
22 2006 Direct Transfers, and 2006 Pass-Through Transfers to the Trust;
23
24 (c) Directing Clear Lake to pay the value of the Clear Lake Transfer to the Trust;
25
26 (d) Directing One Point Street to pay the value of the 2005 Pass-Through Transfer to the
Trust;
(e) Directing HFAH Monaco to pay the value of the 2006 Direct Transfers and the 2006
Pass-Through Transfers to the Trust;

- (f) Directing Defendants each to pay to the Trust all pre-judgment and post-judgment interest on the Clear Lake Transfer, 2005 Direct Transfer, 2006 Direct Transfers, and 2006 Pass-Through Transfers (respectively) at the maximum rate allowable by law and/or equity;
- (g) Directing Defendants to pay the Trust's costs of court;
- (h) Directing Defendants to pay treble damages and reasonable attorney's fees to the Trust in accordance with NRS 41.580; and
- (i) Awarding the Trust such other relief that this Court deems just and proper.

Dated: April 11, 2008.

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